

Preliminary Report to HFS 117 Advisory Committee

This document ~~is a revision of~~ contains the Department's preliminary ~~conclusions~~ report resulting from its further review of documentation deemed pertinent to the revision of HFS 117 and comments it received on its March, 2003 preliminary report. It begins by summarizing the course of events from the naming of the advisory committee in mid-February to the present. It follows this recap by discussing the Department's preliminary-current findings and conclusions.

I. Sequence of Events to Date

A. Advisory Committee Formation

Based largely on previously-collected expressions of interest to participate in the revision of HFS 117, the Department named a 14-member advisory committee by the end of the second week of February. Seven committee members represent those who **request** medical records, while seven committee members represent those who **maintain** medical records. On February 18th, the Department distributed a 4-page project plan to all advisory committee members.

B. Virtual Participation

The Department created a webpage associated with the DHFS administrative rules website specifically for the purpose of providing information to persons interested in the project's progress and establishing an avenue for the Department to solicit and obtain pertinent information. The Department invited persons to submit their email addresses which the Department subsequently used to notify registrants of new webpage postings.

C. Distribution of Department Project Plan

The Department created a project plan that stated the Department's intent to "develop realistic estimates of actual patient record reproduction costs based on an approximation of pertinent costs associated with accomplishing such reproduction." In so doing, the Department would be responsive to sections 146.83 (3m) and 908.03 (6m) (d), Stats., which direct the Department to prescribe fees that are:

- a. the maximum amount a health care provider may charge for duplicate copies of patient health care records; and
- b. based on an approximation of providers' actual costs of reproducing those records.

The project plan also stated the Department's intent "to develop a rule that complies and is consistent with what it believes to be applicable state and federal law, and is based on an approximation of actual medical record reproduction costs." Toward that end, the Department identified and shared what it considered to be the major factors and considerations with all advisory committee members and all virtual participants. These were:

1. The recent federal Health Insurance Portability and Accountability Act (HIPAA) regulations and federal commentary related thereto, particularly the issues of
 - Who, and the circumstances under which, a person will be considered someone's "personal representative" for the purposes of requesting a copy of that person's medical record.
 - Whether the costs associated with record retrieval should be included in fee limits for subject persons or their personal representatives.

2. An approximation of total medical record reproduction costs by attempting to identify the component tasks and estimated costs associated with medical record reproduction. Issues bearing on doing so include the following:

- Whether and how the medical record medium affects the length of time to reproduce a record.
- Whether the medical care provider setting (i.e., hospital, clinic, etc.) or subject patient group (e.g., children, elderly, etc.) affects the time and effort needed to reproduce records.
- The steps involved in reproducing medical records and whether those steps are different for different record mediums and record maintainer settings.

The Department invited all committee members and virtual participants to submit documents to the Department on these major factors and considerations, asking that the documents be submitted, if possible, by March 7th. Specifically, the Department requested the following input:

1. Committee members' thoughts regarding whether the appropriateness and acceptability of the Department's intended approach. If it is not, how it is not, and how and why the commenter would propose it to be different.

2. Information on the following subjects:

- How HIPAA bears on the revision of ch. HFS 117.
- Whether the categories of paper, electronic, microfilm, microfiche and traditional x-ray comprise the universe of medical record mediums for the purposes of this project, and if not, what other mediums should be addressed.
- Whether the steps involved in the reproduction of medical records within a particular medical record maintainer setting or for a particular patient group are sufficiently different to suggest a significantly different reproduction cost.
- The sequence of steps and time associated with each of step typically required for medical record reproduction, by medical record medium, setting or patient group, as appropriate.
- Existing medical record fee limit policies.

To prevent committee members from submitting documents the Department already possessed, the Department listed documents it had already received on the subject of medical record reproduction:

- "An Analysis of the Release of Information Function and the Cost of Copying Hospital Medical Records in the State of Ohio," Ohio Health Information Management Association, January, 1994.
- "Jackson County Circuit Court Medical Records Rule - Update," Kansas City Area Hospital Association, May 9, 1994.
- "Copying Records - The Saga Continues," by Rose Dunn, For The Record, April 7, 1997.
- "Copying Costs: Help is as Close as Your 1040," by Rose Dunn, For The Record, April 6, 1998.

On February 24th, the Department posted essentially the same information and solicitations to virtual participants on the Department's website in a document titled "Virtual Participant Introduction."

D. Receipt of Information

In response to its solicitations, the Department received no suggestions for altering either the Department's intended project approach or focus regarding the major factors and considerations identified by the Department. However, the Department received the following 16 documents:

1. An overview of the tasks required in the release of medical information (from Chrisann Lemery).
2. A memo generally addressing the types of media on which medical records are stored, whether one medical setting or patient group is significantly different enough to merit separate treatment of fee limits, and 1999 information on fee limits in numerous states (Lemery).
3. A general discussion of release of information laws and regulations (Lemery).
4. Fee limits for medical record processing of other states (Janet Swandby).
5. A memo on HIPAA guidelines on charges for copies of medical records (Swandby).
6. A flowchart describing the possible steps in processing a protected medical information request (Swandby).
7. A list of Wisconsin and federal laws that must be complied with when releasing a copy of a patient medical care record (Swandby).
8. A copy of testimony provided by Michael Wickman, President of Information Management Corporation of Green Bay on March 14, 2000, to members of the Senate Health, Utilities, Veterans & Military Affairs Committee opposing Senate Bill LRB 1359 (Swandby).
9. A memo discussing the definition of "personal representative" (Swandby).
10. A memo describing the charges assessed by the IRS for copies of tax returns, the Circuit Court, and the Health Care Financing Administration (Swandby).
11. Emails asking the Department to include the reproduction of medical bills under the applicability of HFS 117 (Jeanne M. Proulx and Jeff Zirgibel).
12. A letter stating that the Department should include consideration of the following: the cost of retrieving a medical record; differences in costs among regions of Wisconsin; the need to include operating expenses such as wages, rent, utilities, duplicating expenses, supervisory costs, legal costs, insurance costs, and the costs of bad debts (i.e., non-payment of copying fees); the steps involved in duplicating medical records; impact on cost in advancement of technology; and the impact on hospitals of the level specified in HFS 117 (Lynn Olson).
13. A letter advocating that HFS 117 provide for some waiver of the costs of copies of medical records for indigent people (Bob Andersen).
14. A letter from the Midwest Medical Record Association of Schaumburg, Illinois, introducing an accompanying spreadsheet containing time study information from four hospitals (Dave Jackson).
15. A spreadsheet of average response times for complying with 57 medical record requests for three hospitals; the proportion of paper, microfilm/fiche, and electronic mediums among those three hospitals; and a breakdown of medical record department budgeted costs for four hospitals (Jackson).
16. A memo supplying information on average hourly wages, proportion of microfilm/fiche in hospital and clinic settings, and a list, brief discussion and time estimate of the five most time-consuming tasks in responding to an average medical record request (Swandby).

On March 31, 2003, the Department released its preliminary report for review by advisory committee members and other interested parties through its posting on the Department's HFS 117 website. The Department asked that persons submit comments by April 14th. The Department received comments from six persons, which it summarized and responded to in a table entitled, "Comments on Department HFS 117 Preliminary Report and Department Responses." During early April, the Department also asked several record maintainer advisory committee members several questions. First, the Department asked several committee member record maintainer representatives for their "ballpark estimate of how much more time-consuming" the act of copying a microfilm record is as opposed to a paper record. In response, the Department was told that copying microfilm records takes about 400% more time. Second, the Department also asked several record maintainer advisory committee members for their estimate of whether there is an extra effort that must be expended by the records maintainer to certify records; and, if so, the

nature of that extra effort, whether it is a fixed (relatively standard) effort that does not appreciably vary regardless of the number of records involved, or whether the effort varies as a function of the number of records involved. And, in either event, what a reasonable estimate would be of the time required to certify records. In response, the Department was told record certifications are performed by management personnel (thereby entailing a higher compensation rate, e.g., \$26-30/hour) and that the review, QA and record certification takes an average of 10-20 minutes. Accordingly, the Department has proposed adding a fee limit of \$7.50 to each request for "certified" records (\$0.50 per minute compensation times 15 minutes) and has amended HFS 117 to reflect that cost.

II. Review and Analysis of Information

As stated in the Department's project plan, the Department's focus and intent, its preferred conceptual approach, was to develop an estimate of the actual costs of medical record reproduction "based on an approximation of pertinent costs associated with accomplishing such reproduction." The Department wanted to do so based on an "attempt to identify the component tasks and estimated costs associated with medical record reproduction." In other words, as a key input to its specifying fee limits, the Department hoped to focus on the results of one or more **time-studies** of the reproduction process. Questions the Department intended to address were:

1. *"Is there a significant difference in the costs of reproducing a paper copy medical record versus other record mediums?"*

- Microfilm and Electronic Mediums

With respect to electronic mediums, the answer is probably "yes," insofar as record retrieval and copying should be much less costly. With respect to microfilm and microfiche, the answer is probably also "yes," insofar as the copying cost component is reported to be three to five times more expensive. While the statutes do not direct the Department to specify fee limits for the reproduction of electronic or microfilm/fiche medical records, the Department would consider doing so if the impact of those mediums on actual costs is significant.

Certainly, the medical care industry is transitioning to electronic record storage¹. However, the migration is expensive and consequently, is likely to be a slow process over many years. On March 11th, the Department asked five "medical record maintainer" advisory committee members individually for their opinion of the current percentage of the various medical record mediums. The Department received two responses, from Chrisann Lemery and Janet Swandby. Their responses are in documents titled "2B1_LemeryEmail_TimeEstimates_032003.DOC," "2B2_Lemery_TimeEstimates_032003.DOC," and "14_Swandby_ResponseToHartzkeQuestions_032603.doc." Ms. Lemery reported that, as of 2003, approximately 85% of medical records are paper. She estimated that 10% of records are microfilm and just five percent are electronic. Ms. Swandby reported that in a hospital setting, about 15% of the records are microfilm/fiche, while in a clinic setting, only about 3% are microfilm/fiche. Separately, in response to the Department's posting of its "Virtual Participant Introduction" document on the HFS 117 webpage, the Department received information from the Midwest Medical Record Association (MMRA) of Schaumburg, Illinois. At the MMRA's request, several hospitals collected medical record information in March, 2003. The Association reported that 86% of the medical records processed by three hospitals were paper, 12% were microfilm/fiche, and 2% were electronic.

Based on published articles and the opinion of advisory committee medical record maintainer representatives, the Department recognizes that the act of copying/duplicating microfilm and

microfilm is ~~somehwatabout~~ about four times more costly for a medical record maintainer than paper records. ~~However,~~ While the Department also recognizes that, conversely, electronic records should be somewhat less costly for a medical record maintainer to reproduce than paper records, the Department has elected to incorporate into its estimates of the actual time required to reproduce records recognition of the fact that about 10% of all medical records are in microfilm/fiche form. The rationale for the Department's reflection of photocopying microfilm/fiche in its actual cost calculations is explained in the Department's response to comment #9 in the table "Comments on Department HFS 117 Preliminary Report and Department Responses." As described in footnote "h" in Appendix 1, considered in isolation, reflecting the added time required to copy microfilm/fiche adds about **four** minutes to the average time required to respond to request to reproduce medical records. And, other things being equal, the added time would increase the DHFS estimate for the labor cost attributable to step 7 (copying) from its original \$0.16 per page (\$16.00/hour divided by 60 minutes times 12 minutes divided by 20 copies) to \$0.21 per page (\$16.00/ hour divided by 60 minutes times 16 minutes divided by 20 copies.) However, in a related issue, two medical record maintainer advisory committee members both suggested (in comments #17 in the April "Comments & Responses" table) that the **average** number of records requested has increased to about **25** in recent years, instead of the 20 records the Department used in its preliminary report. The Department has accepted this suggestion and has incorporated the higher number of 25 into its calculations. Doing so affects only variable cost components of steps #6 (screening the records) and #7 (copying the records.) The Department estimates that increasing the number of records to 25 (from 20) adds a minute to the screening cost and (when combined with the additional 4 minutes attributable to incorporating/reflecting the fact that 10% of the records are microfilm) adds about five minutes to the copying cost. As a result, the labor costs for variable expenses (steps #6 and #7) increase from \$0.23 per page to \$0.25 per page. ~~Given the Department's expectation that medical care providers will increasingly adopt, maintain and store electronic records, and given the small (and likely decreasing) difference between the frequency of electronic (2-5% of total) and microfilm/fiche (10-15% of total) records, and given the peripheral impact of those two record mediums insofar as their 12-20% proportion has a marginal effect on the total "actual" costs of reproducing records, the Department is inclined to not distinguish among record mediums for the purpose of specifying fee limits~~ and base the HFS 117 fee limits on the relatively more available information regarding the cost components for paper records. ~~However, the~~

The Department also believes that each successive time it revises HFS 117 pursuant to s. 146.83 (3m) (b), Stats., it should also assess whether electronic records have increased beyond their current 5% proportion of total record mediums. Once electronic records constitute a greater proportion of total records (e.g., 20%), the Department should examine the effect that has on the appropriateness of the fee limit.

- X-rays

Sections 146.83 (3m) (a) (intro) and 908.03 (6m) (d), Stats., direct the Department to specify fee limits specifically for duplicate "X-ray reports." Indeed, the current HFS 117.05 (2) already does so. Based on the information it has collected, the Department believes that X-rays are more costly to reproduce for several reasons. The most likely are the medical record maintainer's need to purchase and maintain a machine to produce paper copy duplicates (and at a much lower volume than the machine used for reproducing paper copies, and consequently, a higher per unit cost), and the additional time required to reproduce the x-ray images on paper. For these reasons, the Department believes that higher fee limits are warranted for reproducing x-ray records that are not in electronic form.² However, the Department has not obtained good, detailed information on which to base the incrementally higher fee limit for standard X-ray records. Until such information is obtained, the Department is faced with the choice of conforming with the practices of many other

states and allowing medical record maintainers to charge their actual costs for reproducing X-rays, or simply maintaining or slightly raising the existing HFS 117.05 (2) \$4 per X-ray record fee limit. The Department proposes to raise the X-ray fee limit to ~~\$5~~\$5.25 per X-ray based on increases in the Consumer Price Index over the past 11 years since HFS 117 was originally created. The Department would welcome information from medical record maintainers regarding the cost of reproducing standard X-rays. However, given the likely greater influence of the associated various non-labor costs and fixed labor cost, the incremental additional cost associated with X-rays is likely to be relatively small.

2. *“Is there a significant difference in actual medical record reproduction costs among medical care settings?”*

The Department expects that there may be significant differences between hospitals and ambulatory care settings insofar as five states specify different (lower) fee limits for clinics and a medical record maintainer committee member expressed the opinion that clinics might be expected to have, on average, lower record reproduction costs. Unfortunately, the Department did not obtain detailed information beyond the preceding evidence. Until the Department obtains more detailed information or estimates, the Department cannot reasonably approximate an actual cost and therefore, a valid separate fee limit for medical clinic settings.

3. *“Is there a significant difference in actual medical record reproduction costs for particular patient groups, e.g., children or seniors?”*

The Department did not obtain any information indicating that medical records for particular patient groups were more costly to reproduce. Consequently, the Department does not see a need to establish a special fee limit for reproducing the records of a particular patient group.

4. *“What are the steps involved in reproducing medical records?”*

To this question, the Department obtained relatively more information. Based on the information it received, the Department has made a variety of associated observations and conclusions, which are displayed in Appendices 1 and 2.

The Department obtained nine documents describing or, at least, discussing the steps involved in responding to a request for reproductions of medical records. Six of the documents were especially detailed and descriptive of the requisite process.³ Depending on the nature and complexity of the medical record request and how one elects to define a discrete “step,” there are apparently between 10 and 25 discrete steps that involved persons may perform from an initial “reading the request” to a concluding “refiling the record.” Anyone interested in the nature of these steps may review one or more of the six documents listed in footnote #3. The Department also received a list of the 20-odd Wisconsin and federal laws that medical record maintainers must comply with when releasing a copy of a patient medical record (hereinafter referred to as “the process.”)

As previously stated, the Department seeks to comply with the legislative directive that it “prescribe fees that are based on an approximation of actual costs (incurred by medical record maintainers.”) Clearly, each medical record maintainer in responding to each particular request for duplicate copies of records has its own “actual” costs, based on what may be its unique circumstances. Some could conceivably advocate that the Department adopt a fee limit structure that provides for each medical record maintainer to “plug in” their own staff time or dollars the medical record maintainer expended for various aspects of the process in complying with each record request. The Department has not chosen this approach because while the approach would “approximate

actual costs,” there would be no independent and verifiable means of monitoring the accuracy of purported staff time or dollars expended. Consequently, such an approach may be even less successful at achieving an approximation of actual costs. Moreover, the Department believes that the legislature intended the Department to prescribe fee limits that are reasonably easy for medical record requesters to understand and reasonably clear for medical record maintainers to comply with. Therefore, the Department believes it must strive to strike a balance between fee limits that the public can understand and use and fee limits that reasonably accurately reflect the *average* actual costs of medical record maintainers.

If the Department is not going to specify fee limits based on each individual medical record maintainer’s actual costs, the Department could approach the “approximation of actual costs” from two other directions. One approach is easy and involves simply reviewing the fee limits of other states and entities, plotting the various fee limits on a graph, and adopting the 50th (or some other) percentile of the aggregate fee limits. The other approach is to construct a model of the cost components of the process of duplicating a medical record using the best available inputs of steps, time requirements and costs. The Department obtained fee limit information of other states in the event it could not construct a reasonably valid model of cost components and, if it could construct such a model, the Department could still compare the output of its model with other states’ fee limits.

- Reviewing the Fee Limits of Other States

The Department received two separate and different compilations of state fee limits, “2A1_Lemery_StateRates_0199.htm” and “3_Swandby_Staterates_030403.doc.” The Department believes that the Swandby compilation is likely to be the most accurate and up-to-date insofar as it contains the current fee limits for states that prescribe periodic adjustments for inflation.

An obvious problem with relying on the fee limits of other states is that doing so requires the leap of faith that the fee limits of other states are intended to be approximations of the actual costs of medical record reproduction. Unfortunately, the Department has no reason to believe that each state’s fee limit was adopted under the assumption that the limit was an approximation of the actual costs of record reproduction.

Fortunately, the Department is reasonably satisfied with its subsequently described attempt to approximate actual costs by its preferred method of obtaining credible estimates of the actual costs of medical record maintainers’ complying with medical record requests. Consequently, the Department has not devoted significant energy to analyzing and compiling the fee limits of other states and entities. Regardless, the Department notes that the ***mean*** average fee limit for a 2025-page record request among 26 states is ~~\$25.24~~\$29.50 and the ***median*** average is \$30.00. Interestingly, as the subsequent discussion illustrates, the Department’s current ***most generous*** cost estimate option for the fee limit for a 2025-page record request is about 15 percent more than ~~the average fee limit for a 20-page request among the 26 states~~\$31.49, while its ***least generous*** cost estimate option for the fee limit for a 25-page record request is \$21.00.

Regarding state fee limits on the reproduction of X-rays, based on information the Department obtained from the American Health Information Management Association, about 15 states allow medical record maintainers to charge their *actual* costs to reproduce x-rays. Three states impose fee limits ranging from \$1.00 to \$8.00 per record and one state imposes a fee limit of \$15.00 per request and \$0.65 per x-ray. Based on these findings, as previously stated, the Department thinks it is reasonable to simply reflect changes to the Consumer Price Index over the past 11 years since HFS 117 was created by increaseing the existing \$4.00 fee limit in HFS 117.05 (2) ~~of \$4.00 per record to \$5.00~~\$5.25 per record.

- *Fee Limits Based on Credible Estimates of Medical Record Maintainers' Average Actual Costs*

One could reasonably assume that the statutory directive to "approximate actual costs" would be satisfied if the Department could reasonably accurately derive estimates of:

1. The significant steps in medical record maintainers' process of complying with requests for copies of medical records;
2. The average time expended to comply with an average medical record request;
3. Which of the steps constitute relatively *fixed* costs insofar as the time required to complete them tends to vary relatively little from one request versus another;
4. Which steps constitute relatively *variable* costs insofar as the time required to complete them tends to significantly vary with the number of medical records needing to be reproduced; and
5. The fixed and variable nonlabor costs of complying with a record request.

Fortunately, the Department obtained documents that are reasonably specific and credible specifications and estimates of most of these factors.

As previously mentioned, the Department received six separate and very detailed descriptions of the process of responding to requests for medical records.³ The flowchart submitted by Janet Swandby was particularly illustrative and descriptive of the possible complexity of the process. The Department considered using the Swandby flowchart by assigning time expenditures and probabilities to each of the 37+ tasks and task variations, but it soon became apparent that the Department had too little information (and mathematical skills!) to have a reasonable prospect of deriving accurate estimates. The Department subsequently compared the process described in "1_Lemery_ROITASKS_030303.DOC" with the information in the periodical article "Copying Records - The Saga Continues," by Rose Dunn, For The Record, April 7, 1997. The Department noted that the steps described in the three other detailed documents were largely consistent with the Lemery and Dunn documents. The Department's approach and associated data are as follows:

Basically, the Department accepts the process steps identified in the "1_Lemery_..." document. The 12 activities listed in the document are as follows:

1. Opening mail
2. Processing request
3. Logging in request
4. Preparing requisition via computer and/or outguides
5. Retrieving record
6. Screening record
7. Copying record
8. Logging out the request or accounting for disclosure
9. Preparing invoices and/or cover letters
10. Mailing the copies
11. Refiling the record
12. Miscellaneous duties

For most of these steps, the 1997 Dunn article (supplied to the Department by a medical record maintainer committee member) provides estimates of the average required completion time for what Dunn asserts in her article is the 17-page average number of medical records requested. (Dunn used the 17-page average reported in the 1994 Ohio document.⁴) Dunn stated that her use of the 17-page average request length was confirmed by the results of Dunn's firm's study of

requests received during a 7-month period in 1996 at a mid-Missouri hospital. The 17-page average contrasts with a 30-page average reported by Lemery (medical record maintainer committee member and president of the Wisconsin Health Information Management Association), ~~and a 23-page average reported by the Midwest Medical Record Association in correspondence with the Department, and a 25-page average reported by advisory committee member Swandby.~~ Lemery maintains that computerization has increased the amount of information available, thereby generating more reports resulting in more pages, and that in her 22 years in the field of health information, she has witnessed the growing of records. Consequently, the Department raised its presumed average to 25 records.

Based on the 12-step process classified above, the Department built and populated two tables, labeled "Appendix 1" and "Appendix 2." The first 12 rows in column 1 of Appendix 1 are a listing of the fixed and variable labor costs for each of the 12 steps. The last 6 rows in column 1 are a mixture of other inputs (e.g., "labor cost") and compilations of the individual fixed and variable costs. The Department compared the estimates provided in the 1997 Dunn article (column 2, as updated, as needed, by the Department) with estimates for a limited number of steps provided by committee members Lemery (column 3) and Swandby (column 4) and the Midwest Medical Record Association (column 5). The data in columns 3 and 4 were provided by Lemery and Swandby in response to the Department's request of what the five most time-consuming tasks were in responding to requests for medical records.

The Department proposed and explained its own estimates in column 6. The "DHFS Estimates" in column 6 are the Department's attempt to reconcile the disparate estimates stated in columns 2 to 5. As noted in footnote "h" to Appendix 1, however, the apparent wide disparities of estimates for step #7 ("copying records") complicates specifying a particular estimate for that step.

In addition to the labor costs associated with the 12 process steps, complying with a record request also has a variety of fixed and variable **non-labor** cost components. The Department compiled non-labor costs in the table labeled Appendix 2 based on the categories presented in the 1997 Dunn article and informative references to non-labor costs in other documents, including the Midwest Medical Record Association's estimate of 36% for what the Department has categorized as "hard-to-define" costs. The Department accepts the cost components in the first 14 rows from "PC, Printer and Software" to "Hard to Define" costs as the **minimum** costs legitimately associated with the "actual cost" of reproducing a record. The Department considers the questions of whether the fee limit includes the added factors of "profit," "subsidization of some (less-than-actual-cost) requesters" and "off-storage costs" to be open and useful subjects for members' comments. Pending such commentary, discussion and resolution, the Department has proposed fee limits (for requests made by other than individuals for their own records) ranging from ~~\$13.99~~\$14.00 per request plus \$0.28 cents a page to ~~\$20.99~~\$21.00 per request plus \$0.42 per page.

5. *"What is the Bearing and Impact of Federal HIPAA Policies on HFS 117?"*

The final HIPAA regulations and accompanying commentary, published in 2002, pertain to the revision of HFS 117 in two respects and in three places.

- 45 CFR 164.524(c)(4) states that, that if an individual requests a copy of his or her medical record from a medical provider, the provider ***"may impose a reasonable, cost-based fee, provided that the fee includes only the cost of:***

(i) Copying, including the cost of supplies for and the labor of copying, the protected health information requested by the individual;

(ii) Postage, when the individual has requested the copy, or the summary or explanation, be mailed; and

(iii) Preparing an explanation or summary of the protected health information, if agreed to by the individual as required by paragraph (c) (2) (ii) of this section.”

- 45 CFR 164.502(g) states that **“a covered entity must...treat a personal representative as the individual for purposes of this chapter.”** Personal representatives are defined in 164.502(g) as being only parents/guardians of minors, or administrators of estates of deceased persons. Personal representatives **are not** attorneys requesting the records of clients on behalf of those clients.
- Federal commentary, in response to a comment on page 53254 of the August 14, 2002 Federal Register, clarifies that the limited cost components specified under 45 CFR 164.524(c)(4) apply **only** to individuals’ and individuals’ personal representatives’ requests for copies of individuals’ medical records. “The fee limitations in 164.524(c)(4) do not apply to any other permissible disclosures by the covered entity, including disclosures that are permitted for treatment, payment or health care operations, disclosures that are based on an individual’s authorization that is valid under 164.508, or other disclosures permitted without the individual’s authorization as specified in 164.512.”

The Department recognizes the applicability of these federal requirements to revising HFS 117. Were the Department to create requirements in HFS 117 that were not compatible with those expressed in federal regulations and commentary, the Department would be doing the public a disservice insofar as medical record maintainers would have more difficulty administering disjoint laws. Fortunately, the Department believes it can revise HFS 117 to be compatible with both federal and state laws. Chapter HFS 117 can respond to the requirements of sections 146.83 (3m) (a) and 908.03 (6m) (d), Stats., that Department-promulgated fee limits be “based on an approximation of actual costs,” and also comply with federal law by specifying **two** fee limits:

- One fee limit for individuals and individuals’ personal representatives that reflects the Department’s estimate of actual costs for the cost components specified in 45 CFR 524(c)(4); and
- One fee limit for everyone else based on all of the **applicable** cost components in Appendices 1 and 2.

The fee limit for individuals and individuals’ personal representatives would be comprised of the labor cost for step #7 in Appendix 1 plus the supply costs associated with the copying. Assuming the Department estimates ~~42~~17 minutes to be the assigned value of the **average** amount of time to copy the average set of records (now 25), the associated cost would be ~~\$3.20~~ \$4.53 or **\$0.18 per page**.

The Department’s estimates of the supply costs associated with copying are provided in the 6th and 7th rows of Appendix 2. Those costs consist of “Paper” and “Copier Supplies: Toner, Drum Replacement” and amount to only ~~\$0.04~~ **\$0.02 per page**.

Combined with the \$0.18 per page copying labor costs, **the fee limit for requests made by individuals and individuals’ personal representatives would be something like \$3.20 per request plus ~~\$0.04~~ \$0.20 per page.**

The second fee limit would apply to all record requests other than those made by individuals or individuals’ personal representatives for the individual’s records and other than those governed by

other limits under the law. As stated in Appendix 2, **the most inclusive fee limit would be somewhere in the range of \$14.00 per request plus \$0.28 per page to \$20.99 per request plus \$0.42 per page.**

The Department understands that such a two-tiered system may result in an attorney making a request for a client's medical records being charged by a medical record maintainer significantly more than if the client made the request of the medical record maintainer. However, the Department sees no viable alternative. Whether this discrepancy will significantly alter current record request practices remains to be seen.

6. *"Can and should HFS 117 specify lower fee limits for requests made by attorneys on behalf of indigent clients?"*

At least one member of the advisory committee advocates the waiver or further reduction of fee limits when the record request is made on behalf of an indigent. However, the Department believes that it lacks authority to include in the rules a requirement that fees be waived or reduced when an attorney requesting records is representing an indigent. The statute language under which these rules are being created instructs the Department to arrive at a fee system based on an approximation of actual costs. However, health care providers should keep in mind that the rules establish maximum fees. Health care providers have the authority to waive or reduce fees if they choose to do so.

7. *"Can and should the definition of "medical record" include medical bills?"*

At least two virtual participants advocate that the defined term "health care provider records" include patient billing statements. As billing statements might plausibly be considered another type of record, the Department agrees that patient billing statements should be included in the definition of "health care provider records."

8. "Can a certification fee be established?"

The Department is persuaded that the process of certifying medical records requires additional time. In response to Department inquiries of advisory committee members regarding what is required to certify a record and the amount of time it takes, the Department was told that record certifications are performed by management personnel (thereby entailing a higher compensation rate, e.g., \$26-30/hour) and that the review, QA and record certification takes an average of 10-20 minutes. Accordingly, the Department has proposed adding a fee limit of \$7.50 to each request for "certified" records (\$0.50 per minute compensation times 15 minutes) and has created HFS 117.05 (2) (c) to recognize those added costs.

Footnotes

¹ Madison-based Epic Software recently announced a \$1 **B**illion contract with the nation's largest nonprofit HMO, Kaiser-Permanente Health Plan. Kaiser plans to deploy an automated medical records system for its 8.4 million members, using technology to eliminate paper-based charts and files. Epic's software provides a repository that integrates all types of data, including patient charts, physician order entry forms, clinical notes, nursing documentation and pharmacy information. The system will let Kaiser's health care workers electronically access the records of any patient. In addition, health plan members will be able to use the system via the Internet to schedule appointments, seek referrals or request prescription refills. An article in ComputerWorld describing the venture is at:

<http://www.computerworld.com/databasetopics/data/story/0,10801,78384,00.html>

² Medical care providers are increasingly using X-ray machines that produce digital, electronic images. It is likely that such electronic images are less expensive to reproduce.

³ The six documents providing the most detailed information on the requisite process of responding to requests for copies of medical records are:

- An overview of the tasks required in the release of medical information (Lemery).
- A flowchart describing the possible steps in processing a protected medical information request (Swandby).
- "An Analysis of the Release of Information Function and the Cost of Copying Hospital Medical Records in the State of Ohio," Ohio Health Information Management Association, January, 1994.
- "Jackson County Circuit Court Medical Records Rule - Update," Kansas City Area Hospital Association, May 9, 1994.
- "Copying Records - The Saga Continues," by Rose Dunn, For The Record, April 7, 1997.
- "Release of Information Time Study," Midwest Medical Record Association, March, 2003.

⁴ "An Analysis of the Release of Information Function and the Cost of Copying Hospital Medical Records in the State of Ohio," Ohio Health Information Management Association, January, 1994, p. 20.

Appendix 1

Staff Time/Resources Expended for Complying With Record Requests

Step # ^a	Estimated Staff Time Required (minutes)				
	Dunn Article Estimates ^b	Lemery Estimates ^c	Swandby Estimates ^c	MMRA Estimates	DHFS Estimates
1 (fixed)	3	7		<1	2
2 (fixed)			10	1	4
3 (fixed)	1		5 ^d	2	2
4 (fixed)	2			1-2	2
5 (mostly fixed) ^e	19	15-20	20		15
6 (variable)	4 ^f	10 (perhaps 7 for a 17 pages of records)	5		56 ^g
7 (variable)	1 (for all requests) plus 4 seconds per page ^h	12-15 (for copying 30 records; perhaps 9 for 17 records) ^h		28 (for a 23-page average request) ^h	4217 ^h
8 (fixed)	7 (Dept. estimate)	7-10	5 ^d		7
9 (fixed)	6			<1	6
10 (fixed)	3			1	3
11 (fixed)	2.5				3
12 (fixed)	1 (DHFS est.)		5 ⁱ		3
Ave. Time Required for Steps 2, 5, 6, 7, and 8	34 minutes (for 17 pages of records) or 66% of average total staff time	56.5 minutes for 30 pages of records; Perhaps 45 minutes for 17 pages of records	50	31	43
Ave. Total Required Time ^j	51 minutes	Unknown	Unknown	31	6470
Labor Cost	\$15.00/hour ^k	\$20.00/hour	\$21.69/hour	\$40.00/hour	\$16.00/hour ^l
Labor Cost for Fixed Expenses	\$11.25 ^m				\$12.53 ⁿ
Labor Cost for Variable Expenses	\$0.20 per page	\$0.26 per page ^o		\$0.81 per page ^p	\$0.23 \$0.25 ^q
Total Labor Costs (fixed and variable)	\$11.25 + \$0.20 per page				\$12.53 + \$0.23 \$0.25 per page

Footnotes

^aStep Key

1. Opening mail

2. Processing request
3. Logging in request
4. Preparing requisition via computer and/or outguides
5. Retrieving records (locating records and confirming correctness and completeness of records)
6. Screening records (checking records for AODA, MI HIV information; identifying and tagging desired reports)
7. Copying records (disassembling records; copying desired pages; checking copy quality; handling misfiled pages; reassembling record; producing copies from mediums other than paper)
8. Logging out the request or accounting for disclosure
9. Preparing invoices and/or cover letters
10. Mailing the copies
11. Refiling the records
12. Miscellaneous duties

^b In her 1997 article, Dunn reported the average required staff time for a 17-page record request.

^c Lemery and Swandby reported average required staff time for the 5 most time-consuming activities. Lemery for a 30-page record request and Swandby (assumedly) for a 2025-page request.

^d The Department divided one of Swandby's five most time-consuming tasks/steps between two different steps. In her estimate of 10 minutes for documentation of each request, Swandby addressed both logging in requests and logging out requests. Therefore, the Department allocated 5 minutes each to steps #3 and #8.

^e The Department believes that medical maintainer staff must spend a base amount of record retrieval time in a standard variety of ways for each request, regardless of the size of the request. In other words, the Department is assuming that a request generating 200 pages of records will not normally require substantially more time than a request generating 20 pages.

^f Estimated by Dunn to take 4 minutes for a 17-page record or about 15 seconds a page. At \$15.00 per hour, 15 seconds is about \$0.06 per page.

^g ~~Five~~ Six minutes for 2025 pages of records, or about ~~45~~14.4 seconds a page. At \$16.00 per hour, ~~45~~14.4 seconds is about \$0.07 per page.

^h The Department has suggested ~~42~~17 minutes for copying an average 2025 pages of records, 10% of which are assumed to be in the more time-consuming microfilm format. The Department points out however, ~~that although~~ there are ~~huge~~large, unexpected variations among Dunn's reported average estimate of a little over 2 minutes to copy 20 records, Lemery's reported estimate of 12-15 minutes for copying 30 records, Swandby's not even including "copying" as one of the five most time-consuming tasks, and the MMRA's reported average of 28 minutes for copying an average 23 pages of records. ~~Twelve~~Seventeen minutes for 2025 pages of records or about ~~36~~41 seconds per page. At \$16.00 per hour, ~~36~~41 seconds is about ~~\$0.16~~\$0.18 per page.

ⁱ Swandby identified "phone calls relating to each request" as the fifth most time-consuming task and estimated that an average of five minutes is spent on this task for every request. Given that the Department did not specifically delineate such a step/task, the Department assigned that time to step #12, Miscellaneous.

^j The sum of minutes associated with steps 1 to 12.

^k Dunn estimated hourly compensation was \$12.40 (or about \$15.00 in 2004 dollars at a 3% annual inflation rate.)

^l Estimate of Medical Record Maintainer Committee Member McElroy.

^m Dunn estimated about 45 minutes associated with fixed expense steps, which equals about \$11.25, assuming a labor cost of \$15/hour.

ⁿ 47 total minutes of aggregate fixed costs at \$16.00 per hour equals \$12.53.

^o 23.5 minutes (sum of estimated time for steps 6 and 7) for 30-page request equals 0.78 minutes per page. 0.78 minutes @ \$20.00/hour labor rate equals \$0.26 variable expense per page.

^p 28 minutes divided by 23-page average equals 1.22 minute per page average time required. Assuming a \$40/hour labor rate, 1.22 minutes equals \$0.81 variable expense per page.

^q ~~1723~~ total minutes of aggregate variable costs at \$16.00 per hour equals ~~\$4.53~~\$6.13; ~~\$4.53~~\$6.13 divided by the ~~2025~~-page average equals ~~\$0.23~~\$0.25 per page.

Appendix 2

NonLabor Costs for Complying With Record Requests

Cost Component	Fixed or Variable Cost	Estimated Cost	Cost Per Request	Cost Per Page
PC, Printer and Software	Mainly Fixed	\$500/year ^a	\$0.06 ^b	
Copier, Fax Machine and Microfilm Reader Printer	Mainly Fixed	\$1,850/year	\$0.20	
Service Contract: Copier	Fixed	\$750/year ^c	\$0.08	
Service/Maintenance on Software	Fixed	\$100	\$0.01	
Liability/insurance	Fixed	\$2,500 ^d	\$0.27	
Paper	Variable	\$25.99/5000 pages		\$0.005
Copier Supplies: Toner, Drum Replacement	Variable	\$250/year		\$0.03 \$0.01 ^o
Printer Paper for Invoices, Cover sheets, requests for addl' info., letters, etc.	Variable	\$37.99/case		\$0.01
10 x 13 Clasp Envelopes	Variable	\$17.99/box of 100	\$0.18	
Miscellaneous Minor Supplies	Variable		\$0.01	
Postage	Actual	NA ^e	NA	NA
Bad Debt		10% ^f		
Physical Space	Fixed	\$10,829 ^g	\$0.84	
"Hard to Define" Costs ^h	Both	12-36% Add-on to Component Costs ^h	12-36% Add-On to Total Component Costs ^h	12% ^h
Profit ⁱ	NA	10% Add-on to Component Costs ⁱ	10% Add-on to Total Component Costs	10%
Subsidization of "Less-than Actual-Cost" Requesters	NA	40% Add-on to Component Costs ^j	40% Add-on to Component Costs ^j	40%
Cost to Retrieve Record(s) from Off-Site Storage ^k	Variable	up to \$30/request	Unknown	
Total Non-Labor Fixed Costs			\$1.46 per request ^L	
Total Non-Labor Variable Costs				\$0.05 \$0.03 per page
Total Non-Labor Costs		\$1.46 + \$0.05 \$0.03 per page		
Total Labor Costs from Appendix 1		\$12.53 + \$0.23 \$0.25 per page ^m		
Minimum Total Cost ⁿ		\$13.99 + \$0.28 per page		
Minimum Total Cost + 10% Profit		\$15.38 + \$0.31 per page		
Minimum Total Cost + 50% (10% profit and 40% subsidy)		\$20.99 + \$0.42 per page		

Footnotes

^a Department chose a much lower figure than Dunn's "\$1,250 per year for four years" in her 1997 article to reflect significantly lower prices for this equipment than in 1997. Assumes a 4-year useful life and Dunn's reported 9100 request volume.

- ^b Based on a 9,100 requests annually having a 20-copy average. Fixed cost component would be much higher with much lower request volume. For example, a clinic might process only several hundred requests annually, but the Department assumes the subject PC, Printer and Software could be used all of the rest of the time for different purposes, using different software. At the other extreme, entities whose primary business is the reproduction of medical records, should have lower fixed costs because they use the machines for mostly nothing else, thereby lowering their marginal costs.
- ^c Department raised the \$680 reported by Dunn on page 23 of her 1997 article to account for inflation.
- ^d Department raised the \$1700 reported by Dunn on page 23 of her 1997 article to account for inflation.
- ^e The Department did not consider inclusion of "postage" as a pertinent cost component because sections 146.83 (3m) and 908.03 (6m) (d) of the statutes allow medical record maintainers to charge requestors the "actual postage or other delivery costs."
- ^f As reported by Dunn on page 23 of her 1997 article. (Possible discussion topic regarding whether to include this cost component or what percentage it should be.)
- ^g Figure imputed by the Department based on the Dunn 1997 article-reported 154,700 pages copied annually divided by reported \$0.07 per page cost.
- ^h Discussed by Dunn in article on page 22. Includes the largely fixed costs of: telephone charges to communicate with requesters; space expenses such as heat, light and air conditioning; administrative overhead costs such as supervisory expense, payroll administration and human resources involvement; training costs such as specialized seminars and reference books; accounting/bookkeeping expenses; legal counsel guidance; sales taxes; purchasing and receiving department support; and housekeeping. The Midwest Medical Record Association reports that its corporate figures indicate that "an additional 36% needs to be added to the on-site production expenses to allow for such things as legal expenses, collections, software development, tech support, etc." As the Department has probably broken out and accounted for some of these costs as discrete cost components, the Department prefers to use Dunn's 12% estimate.
- ⁱ Discussed by Dunn in her 1997 article on page 22. Justified as necessary "to help replace equipment and seek new business" (Possible discussion topic regarding whether to include this cost component or what percentage it should be.)
- ^j The Department received many documents in which mention was made of a 40% average revenue shortfall resulting from the fact that medical record maintainers frequently must supply record reproductions to a variety of requesters who reimburse the maintainers for less than it cost the maintainer to comply with the request. Such requesters are: individual patients for their own record; persons who cancel their requests; insurers?; Peer Review Organizations?; Medicare and Medicaid? (Another possible discussion topic...)
- ^k At least some medical record maintainers advocate incorporating their cost of retrieving records from off-site storage. The number reported is as high as \$30 per request. The Department speculates that such fees may occur in only a limited number of cases, and may or may not be reasonable. Consequently, the Department has not reflected off-site storage costs in the fee limit cost structure.
- ^l Does not include either the 10% profit or 40% subsidy "add-on" costs.
- ^m Variable labor costs from Appendix 1.
- ⁿ The sum of total labor and non-labor costs. Excludes the components of "profit," "subsidization" and "off-site storage" issues.
- ^o The Department originally erroneously derived its estimate of \$0.03 by dividing \$250 by 9,100 requests. Given that these supplies are variable costs, the Department's estimate should have been derived by dividing \$250 by the product of 9,100 requests times the 20-page average request, which equals 182,000 pages. Doing so would reduce the average per page cost to less than \$0.01. Assuming a 25-page average medical record request, Dunn's reported \$250 annual cost may be expected to be \$312 (\$250 x 1.25 to reflect the fact that 25 pages is 25% more than 20 pages.) Based on Dunn's 9,100 annual requests, the per page cost would be derived by dividing \$312 by the product of 9,100 requests times a 25-page average request, which equals 227,500 pages. Doing so still results in a per page cost of less than \$0.01.

Appendix 3

Draft Initial Structure & Content of HFS 117

FEES FOR COPIES OF HEALTH CARE PROVIDER RECORDS

HFS 117.01 Authority and purpose.
HFS 117.02 Applicability.
HFS 117.03 Definitions.
HFS 117.04 Request for duplicate records.
HFS 117.05 Fees for duplicate records.

HFS 117.01 Authority and purpose. This chapter is promulgated under the authority of ss. 146.83 (3m) and 908.03 (6m) (d), Stats., to establish uniform fees that are the maximum fees that may be charged for a copy of health care records under s. 146.83 (1) (b) or (c) or 908.03 (6m), Stats.

HFS 117.02 Applicability. This chapter applies to all persons and entities who request duplicate health care records under ss. 146.83 and 908.03 (6m) (c) 3., Stats., and to all health care providers who supply those records, unless superseded by fees established by other applicable law.

Note: An example of other applicable law is the fee limits imposed under s. 102.13 (2) (b), Stats., for worker's compensation cases.

HFS 117.03 Definitions. In this chapter:

- (1) "Department" means the Wisconsin department of health and family services.
- (2) "Health care provider" includes any persons or entities specified in ss. 146.81 (1) or 908.03 (6m) (a), Stats.
- (3) "Health care provider records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including any billing statements.
- (4) "Personal representative" means a person who both has authority under state law to act on behalf of the patient and qualifies as a "personal representative" under 45 CFR 164.502(g).

HFS 117.04 Request for duplicate records. A person requesting duplicate health care provider records shall provide sufficient identifying information about the patient and the pertinent records to permit identification and location of the specific records. The request shall include all of the following:

- (1) The correct name of the patient whose records are the subject of the request.
- (2) The patient's identifying number, if known.
- (3) The patient's date of birth, if known.
- (4) A description of the records requested.

(5) The written informed consent of the patient or person authorized by the patient to give consent to release of the records, if required by law.

HFS 117.05 Fees for duplicate records. (1) REQUESTS FOR RECORDS FROM THE PATIENT OR PERSONAL REPRESENTATIVE OF THE PATIENT. If a patient or personal representative of the patient requests duplicate copies of the patient's medical records, the health care provider may charge no more than the following fees:

(a) For other than X-rays, all of the following:

1. ~~\$3.20~~ per request.

2. ~~Four~~ Twenty cents per record page.

3. ~~2.~~ The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

(b) For X-rays, all of the following:

1. ~~\$5.00~~ \$5.25 per X-ray copy.

2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

Note: Sales taxes, if applicable, also may be added to the fee limits under this subsection.

(2) REQUESTS FOR RECORDS FROM INDIVIDUALS OTHER THAN THE PATIENT OR THE PATIENT'S PERSONAL REPRESENTATIVE. If a person is requesting duplicate copies of another person's medical records and the person making the request is not the personal representative of the patient, a health care provider may charge the requester no more than the following fees:

(a) For other than X-rays, all of the following:

1. ~~\$21.00~~ \$14.00 to \$21.00 per request. **(To be determined)**

2. Twenty-eight to Forty-two cents per record page. **(To be determined)**

Note: The "per page" fee limit applies to the total number of pages, in addition to the "per request" fee limit.

3. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

(b) For X-rays, all of the following:

1. ~~\$5.00~~ \$5.25 per X-ray copy.

2. The actual costs of postage or other means of delivering the requested duplicate records to the person requesting the records.

(c) For certified records, an additional \$7.50 per request.

Note: Sales taxes, if applicable, may also be added to the fee limits under this subsection.